

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

**JAMON T. BRIM,**

**Plaintiff,**

**V.**

**MIDLAND CREDIT  
MANAGEMENT, INC. and  
MIDLAND FUNDING, LLC,**

## Defendants.

**CIVIL ACTION NO.  
5:10-cv-0369-IPJ**

## MOTION TO QUASH SUBPOENA

Pursuant to Federal Rules of Civil Procedure 45(c)(3) and 26(c)(1), Defendant Midland Credit Management, Inc. (“Midland”) moves this Court to enter an Order quashing Plaintiff’s subpoena to non-party American Express:

1. Earlier this afternoon, Friday, February 11, 2011, counsel for Midland received a service copy of a subpoena from Plaintiff directed to non-party American Express, commanding American Express to submit to deposition on Tuesday, February 15, 2011, and to produce certain documents at that deposition. This is the first notice Midland's counsel has received of Plaintiff's intent to seek testimony or documents from American Express. The subpoena was purportedly sent to American Express via overnight mail on Tuesday, February 8, 2011. (*See Exhibit A, Subpoena*).

2. The discovery cut-off in this case was October 22, 2010. Now, more than three-and-a-half months later, Plaintiff seeks deposition and document discovery just four business days before trial, with notice to Midland of only two business days.

3. To the extent the subpoena is for a *trial* deposition (rather than a discovery deposition), final witness and exhibit lists for the trial beginning in 10 days were due February 1, 2011. *See* Scheduling Order, doc. 14. Plaintiff's witness list did not include a witness from American Express. (*See* doc. 47). Having not disclosed a witness from American Express on his final witness list, the trial deposition of American Express would be a waste of both parties' time and money. Plaintiff's subpoena should therefore be quashed.

4. Moreover, American Express does not have any records concerning the Plaintiff. In October 2010, Midland served a subpoena for documents on American Express, and American Express did not produce any documents. Earlier today, American Express sent to Midland's counsel a letter stating that it "does not have records responsive to the subpoena request" and that Plaintiff's "name/address and Social Security . . . were not located in our database." (*See* Exhibit B, Letter from American Express).

Respectfully submitted this 11th day of February, 2011.

/s/ Jason B. Tompkins

One of the Attorneys for Defendant  
Midland Credit Management, Inc.

**OF COUNSEL:**

Eric B. Langley

Jason B. Tompkins

BALCH & BINGHAM LLP

Post Office Box 306

Birmingham, Alabama 35201-0306

Telephone: (205)251-8100

Facsimile: (205)226-8798

[elangley@balch.com](mailto:elangley@balch.com)

[jtompkins@balch.com](mailto:jtompkins@balch.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of February 2011, I have filed the above and foregoing with the Clerk of the Court via the CM/ECF electronic filing system, which will send notification to all counsel of record listed below:

Penny Hays Cauley  
HAYS CAULEY, P.C.  
549 West Evans Street, Suite E  
Florence, SC 29501  
phc917@hayscauley.com

Ronald C. Sykstus  
BOND, BOTES, SYKSTUS, TANNER & EZZELL, P.C.  
415 Church Street, Suite 100  
Huntsville, AL 35801

Leonard A Bennett  
CONSUMER LITIGATION ASSOCIATES PC  
12515 Warwick Blvd, Suite 100  
Newport News, VA 23606  
757-930-3660  
Fax: 757-930-3662  
Email: lenbennett@clalegal.com

/s/ Jason B. Tompkins  
Of Counsel